TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~290~~ 96

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ALFRED HUGER AND CHARLES T. LOWNDES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED SEPTEMBER 15, 1868.

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1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a Circuit Court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 186 , before the Honorable George S. Bryan, judge of the said United States for the district of South Carolina, holding said Circuit Court according to the form of the act of Congress, in such case made and provided, the following proceedings were had:

THE UNITED STATES
vs.
ALFRED HUGER and CHARLES T. LOWNDES.

Be it remembered that heretofore, to wit, the first day of May, A. D. 1867, the said United States impleaded the said Alfred Huger and Charles T. Lowndes, in an action on promises, as follows:

FOURTH CIRCUIT OF THE UNITED STATES OF AMERICA,
South Carolina District:

The President of the United States of America to the marshal of the said district, greeting:

You are hereby commanded, without delay, to attach the bodies of Alfred Huger and Charles T. Lowndes, wheresoever they may be found within the aforesaid district, so that you compel them to be and appear before the clerk of the Circuit Court of the United States of America for the aforesaid circuit and district, at the rules to be holden at Charleston, in the aforesaid district, on the first Monday in June next, to answer to the United States of America of a
2 plea that they render to the said plaintiffs the full and just sum of thirty thousand dollars, which to the said plaintiffs they owe, and which from them they unjustly detain, and so forth; and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of Anerica, at Charleston, in South Carolina, district aforesaid, the first day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and in the ninety-first year of the sovereignty and independence of the United States of America.

D. T. CORBIN,
U. S. District Att'y S. C.
[L. S.] DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

And J. P. M. Epping, marshal of the said United States for the district aforesaid, returned said writ, endorsed as follows:

U. S. MARSHAL'S OFFICE, *South Carolina District.*

I hereby depute V. J. Tobias to execute the within process, without recourse against me.

May 1, 1867.

[L. S.] J. P. M. EPPING, *U. S. Marshal.*

I hereby certify that I have delivered to the within-named defendants, Alfred Huger and Charles T. Lowndes, each, a copy of the within process.

Charleston, May 2, 1867.

V. J. TOBIAS,
Dep'ty Mar.

And upon the third day of June, A. D. 1867, the said United States, by David T. Corbin, their attorney, declared, in the Circuit Court here, against the said Alfred Huger and Charles T. Lowndes, in words and of the tenor following:

3 U. S. Circuit Court.

THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

Alfred Huger and Charles T. Lowndes, citizens of the State of South Carolina, were attached to answer to the United States of America, in a plea that they render to the said plaintiffs the full and just sum of thirty thousand dollars, which to the said plaintiffs they owe; and which from them, they, the said defendants, unjustly detain, and so forth; whereupon the said plaintiffs, by David T. Corbin, their attorney, complain, that whereas the said defendants, on the twenty-fourth day of April, in the year of our Lord one thousand eight hnndred and sixty, at Charleston, in the district of Charleston, and State of South Carolina, within the United States of America, and within the jurisdiction of this court, by their certain writing obligatory, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of thirty thousand dollars, to be paid to the said plaintiffs whenever they, the said defendants, should be thereunto required, which said writing obligatory was and is subject to a certain condition thereunder written; that the said Alfred Huger was appointed deputy postmaster at Charleston aforesaid, and "shall well and truly execute the duties of said office, according to law and the instructions of the Postmaster General, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster, to the Post Office Department, in manner and form prescribed by the Postmaster General, in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law,
4 all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also

faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers and other property and papers which he, as postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department." And the said plaintiffs aver that they have commenced this their suit for the recovery of a debt or balance due to the general Post Office Department; that the said defendant, Alfred Huger, did not, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty, account, nor at any time between that day and the third day of October, in the year of our Lord one thousand eight hundred and sixty-five, nor at any time since hath he accounted to the Post Office Department for all monies that had come to his hands, as postmaster, during all that time, for postage stamps, stamped envelopes, bonds, notes and drafts, received for the use of the Post Office Department; that on the third day of October, in the year of our Lord one thousand eight hundred and sixty-five, there came to the said Alfred Huger five thousand five hundred and seventy-six dollars and forty-one cents ($5,576 41) of moneys for postage and stamps, over and above the allowance made him by law; and that the said defendant, Alfred Huger, did not, on the day and in the year last aforesaid, or at any time in three months next ensuing, or at any time since, pay the said sum of five thousand five hundred and seventy-six dollars and forty-one cents, or any part thereof, to the said plaintiffs; by reason of which said breaches the said writing obligatory became forfeited, and an action hath accrued to the said plaintiffs to have and demand of them, the said defendants, the said sum of thirty thousand dollars above demanded. Yet the said defendants, or either of them, although requested so to do, have not yet paid the said sum of thirty thousand dollars above demanded, or any part thereof, to the said plaintiffs; but to pay the same to them have hitherto altogether refused, and still do refuse, to the damage of the said plaintiffs thirty thousand dollars; and therefore they bring suit, and so forth.

And the said plaintiffs bring here into court, the writing obligatory which testifies the debt in form aforesaid, the date whereof is the day and year as above set forth.

D. T. CORBIN,
U. S. Dist. Att'y S C.

And on the first day of July, in the year of our Lord one thousand eight hundred and sixty-seven, comes into court, the said Alfred Huger by Rutledge and Young his attorneys, and the said Charles T. Lowndes by McGrath and Lowndes, his attorneys, and to the declaration of the said United States, file their pleas in words and of the tenor as follows:

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, to wit:

And the said Alfred Huger by Rutledge and Young, his attorneys comes and defends the wrong and injury when and so forth, and saith that the said plaintiff, the United States of America, ought not to have or maintain his aforesaid action thereof against him because he saith that sometime, to wit, on the nineteenth day of December in the year of our Lord one thousand eight hundred and sixty, the people of the State of South Carolina in convention assembled, passed an ordinance by which the said State announced and declared
6 that the political connexion at that time subsisting between said State and others of the United States, under the Constitution of said United States, was dissolved; and said convention repealed the ordinance of the convention of said State, in the year of our Lord one thousand seven hundred and ninety-one, by which said political connexion had been established, and that from time to time for several months succeeding thereafter various others of the States known as Southern States, in respective conventions of their said peoples passed similar ordinances dissolving political connexion respectively with the said United States; and said States so seceding forthwith organized a government between themselves which was denominated the government of the Confederate States of America, and therefrom sometime, to wit, in June in the year of our Lord one thousand eight hundred and sixty-one, all political and governmental relations between the said government of the United States, and persons residing within the territorial limits of the States so seceding were disrupted and broken up and became impossible, and a war resulted between the governments of said United States and Confederate States; and said Confederate States for a long period, to wit, for four years maintained armies and navies, established a currency, possessed itself of the sovereign power and authority over the country within its assumed jurisdiction, and excluded absolutely and entirely the authority of the said United States within the territorial limits thereof. And thereupon, to wit, in March in the year of our Lord one thousand eight hundred and sixty-one, the said defendant addressed sundry letters at different times to the Postmaster General of the United States, seeking instruction as to his duty in the premises, and received instructions to retain in his hands all moneys belonging to said department and pay any drafts drawn on him which the said defendant did; and sometime in the year aforesaid, to wit, in June in the year of our Lord one thousand eight hundred and sixty-one, when all intercommunication became impossible between the government of the United States and any person resident
7 within the authority of the said Confederate States, and no officer of the said United States government, treasury agent, or other agent remaining within the territorial limits of the said Confederate States, the said defendant sealed up in a sealed package all the moneys in gold, to wit, two thousand seven hundred and ninety-two $\frac{31}{100}$ dollars belonging to the government of the United States in his hands at said period, and deposited the same for safe keeping in

the vault of the Bank of Charleston, in the State of South Carolina, and subsequently, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and sixty-two, the said bank removed its specie to Columbia in the State of South Carolina, and the said defendant at such time withdrew his said package containing the moneys of the United States as aforesaid, and transmitted the said package by express to the branch Bank of the State of South Carolina, in Columbia, of said State, and deposited the same in the vault of said bank for safe keeping. And subsequently, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-three, the government of the said Confederate States demanded and took from the said defendant to the own proper use of the said government the said package containing moneys in gold, the property of the United States to the value, to wit, of two thousand seven hundred and ninety-two 31-100 dollars. And the said defendant says also, that on the day and year aforesaid, to wit, first day of June in the year of our Lord one thousand eight hundred and sixty-one, certain postage stamps belonging to the said government of the United States, remained in his hands which said stamps the said defendant retained until the occupation of the city of Charleston by the troops of the said United States on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, at which time the said postage stamps were trnnsferred by the said defendant to the authorities of the Post Office Department of the said government of the United States, for
8 which the said defendant has received credit in his account with said government of the United States. And the said defendant also says, that on the day and year aforesaid to wit, first day of June in the year of our Lord one thousand eight hundred and sixty-one, certain envelopes for the enclosing of letters, known as postage envelopes remained in his hands until, to wit, the first day of March in the year of our Lord one thousand eight hundred and sixty-three, at which time the said government of the Confederate States, exercising sovereign power, demanded of and took the same from the said defendant. And the said defendant also says, that neither the said postage stamps nor envelopes of the character of the stamps and envelopes aforesaid, were used by the government of the United States at any time subsequently to the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, and became thereafter of no value as postage stamps and postage envelopes.

Without this, that the said writing obligatory hath become forfeited, and the said plaintiff entitled to his said recovery in manner and form as the said declaration hath alleged; and of this the said defendant puts himself on the country.

RUTLEDGE & YOUNG,
Def't's Att'ys.

And the plaintiffs doth the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea in behalf of the said defendant, Alfred Huger, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that on or about June, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain moneys in specie, amounting in value to the value, to wit, of two thousand seven hundred and ninety-two 31-100 dollars, and certain postage stamps and envelopes of some value, remained
9 in his hands, belonging to the said government of the United States, and that on or about the year and day aforesaid, to wit, the first day of June in the year of our Lord one thousand eight hundred and sixty-one, certain persons assembling and combining together unlawfully to dispossess the United States of all authority and power within certain territorial limits, within which said limits this defendant resided, did, on the day and year aforesaid, seize and take into their hands the entire control of said country embraced within said limits, and did overturn and destroy the authority of the United States within said limits for a long period of time, to wit, from the day and year aforesaid, to wit, the first day of June, A. D. 1861, to the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and during said period did possess themselves of all property of the United States within the same with force and arms; and in the further exercise of said power, which overturned and destroyed the authority of the United States within said limits for the period aforesaid, with force and arms did thereupon, to wit, on the day and year aforesaid, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-three, seize and take from his custody and control, against the will of the said defendant the moneys and postage envelopes belonging as aforesaid to the government of the said United States. And of this the said defendant puts himself on the country.

RUTLEDGE & YOUNG,
Def't's Atty's.

And the plaintiffs doth the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea in this behalf, the said defendant, Alfred Huger, by like leave of the court, here for this purpose first had and obtained according to the form of the statute in such case
10 made and provided, says, that he the said defendant, after the making of the said writing obligatory, and after he had received the moneys for postage stamps, stamped envelopes, &c., in the plaintiff's said declaration mentioned, and before the commencement of this suit, to wit, on the first day of June, Anno Domini, 1865, and on divers days thereafter, at Charleston, in the district and circuit aforesaid, well and truly accounted for and paid the said moneys that had come to his hands as postmaster, for postage

stamps, stamped envelopes, bonds, notes, and drafts, as in plaintiff's declaration alleged. And of this he puts himself on the country.

RUTLEDGE & YOUNG,
Def't's Att'ys.

And the plaintiffs do the like.

D. T. CORBIN,
U. S. Att'y.

And for a further plea on this behalf the said defendant, Alfred Huger, by like leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said writing obligatory, in the plaintiff's declaration mentioned, is not his deed; and of this he puts himself on the country.

RUTLEDGE & YOUNG.
Def't's Atty's.

And the plaintiffs do the like.

D. T. CORBIN,
U. S. Att'y.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, to wit:

And the said Charles T. Lowndes, by Magrath & Lowndes, his attorneys, comes and defends the wrong and injury, when,
11 and so forth, and says that the said plaintiff, the United States of America, ought not to have or maintain his aforesaid action thereof against him, because he says that the said writing obligatory, in the plaintiff's declaration mentioned, is not his deed; and of this he puts himself on the country.

MAGRATH & LOWNDES,
Def't's Att'ys.

And for a further plea in this behalf, the said defendant, C. T. Lowndes, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that on or about June, to wit: the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain moneys in specie, amounting in value to the value, to wit, of two thousand seven hundred and ninety-two 31-100 dollars, and certain postage stamps and envelopes of some value, remained in the hands of the said defendant, Alfred Huger, belonging to the said government of the United States, and that on or about the year and day aforesaid, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, certain persons, assembling and combining together unlawfully to dispossess the United States of all authority and power within certain territorial limits, within which said limits the defendant, Alfred Huger, resided, did on the day and year aforesaid seize and take into their hands the entire control of said country embraced within said limits, and did overturn and destroy the authority of the United States within said limits for a long

period of time, to wit, from the day and year aforesaid, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-five, and during said period did possess themselves of all the property of the said United States, within the same, with force and arms; and in the further exercise of said power which overturned and destroyed the authority of the United States, within said limits for the period aforesaid, with force and arms, did thereupon, to wit, on the day and year aforesaid, to wit, the first day of June, in the year of our Lord one thousand eight hundred and sixty-one, seize and take from the custody and control of the said Alfred Huger, against the will of the said Alfred Huger and of this defendant, the moneys and postage envelopes and so forth, belonging, as aforesaid, to the government of the said United States. And of this the said defendant puts himself on the country.

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MAGRATH & LOWNDES,
Def'ts Att'ys.

And the pl'ff doth the like.

D. T. CORBIN, *U. S. Att'y.*

And for a further plea in this behalf the said defendant, Charles T. Lowndes, by like leave of the court here for this purpose first had and obtained, says that the said plaintiff ought not to have or maintain their aforesaid action thereof against the said defendants, because he says that the said Alfred Huger, after making the said writing obligatory, and after he had received the said moneys, postage stamps and stamped envelopes and so forth, in the plaintiff's said declaration mentioned, and before the commencement of this suit, to wit, of the first day of June, in the year of our Lord one thousand eight hundred and sixty-five, and on divers days thereafter, and before the commencement of this suit at Charleston, in the district and circuit aforesaid, well and truly accounted for and paid the said sums of money received by him for postage stamps, stamped envelopes and so forth in the plaintiff's said declaration mentioned. And of this the said defendant puts himself on the country.

MAGRATH & LOWNDES,
Def's Att'ys.

And the plaintiff doth the like.

D. T. CORBIN, *U. S. Att'y.*

13 And on the first Monday in August, A. D. 1867, comes into court the parties aforesaid, by their attorneys aforesaid, and upon motion of the said defendants, by their atttorneys, upon the ground that the said defendants are not ready for trial, having understood from the court the right of continuance existed at the first term, further process of and upon the premises aforesaid, is, by order of the court, continued until the fourth Monday in November next. At which said Monday in November, A. D. 1867, comes again into court the parties aforesaid, by their attorneys aforesaid, whereupon the

attorney for the plaintiffs moves the court that the said cause proceed to trial, and the defendants, by their said attorneys, resist said motion, and present the following affidavit for a continuance of said case.

THE UNITED STATES
vs.
ALFRED HUGER AND CHARLES T. LOWNDES.

THE UNITED STATES OF AMERICA, *South Carolina District.*

Personally appeared Alfred Huger, defendant in above cause, and makes oath, that the witnesses he wishes to examine in the above cause are residents of Charleston district, State aforesaid, and are engaged in business which commands their constant attention, and that it will be difficult, if not impracticable, to procure their attendance in Columbia, at a specified time, to attend the trial of said cause, and that such witnesses are necessary to his defence of said case; that he has no desire to interpose any obstacle to the speedy trial of the cause, and that the object of his application, thro' his counsel, is simply to secure the trial to be had where there is a better probability of his procuring the witnesses necessary to his defence when the cause shall be called peremptorily for trial, hence he prays the cause may be continued.

[L. S.] ALFRED HUGER.

Sworn to before me this third of Dec'r, anno Domini 1867.

B. H. RUTLEDGE, *Magistrate.*

Upon the reading and filing of which said affidavit, further process of and upon the premises aforesaid is, by order of the court, continued till the first Monday in April next.

14 At which said Monday in April, A. D. 1868, comes into court the parties aforesaid, by their attorneys aforesaid.

Therefore it is commanded, that the United States marshal in and for the district of South Carolina, do summon forty-eight good and lawful men, to be drawn by ballot, according to law, to be and appear before the justices of the said court, to be holden at Charleston, on the first Monday of April next, by whom, and so forth; and who neither, and so forth; to recognize, and so forth; because as well, and so forth; and the same day given to the parties aforesaid, at the place aforesaid. And afterwards, that is to say, on the day and at the place aforesaid, before the justices aforesaid, come, as well the said United States of America, by their attorney aforesaid, as the said Alfred Huger and Charles T. Lowndes, by their attorneys aforesaid; and the jurors aforesaid being demanded, some of them, to wit, William Kirkwood, and eleven others, come, and being drawn by ballot, according to law, and sworn of the jury aforesaid to say the truth of the within contained, do, on their oath, say, that the said defendants do not owe the said sum of five thousand five hundred and seventy-six dollars and forty-one cents, as the said United States of America above in their declaration have alleged against them.

Memorandum.

Before the jurors withdrew from the bar of the court here, the said United States of America, by their attorney aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in the form following, to wit:

In the Circuit Court of the United States for the district of South Carolina.

Plaintiffs' bill of exceptions.

THE UNITED STATES
v.
ALFRED HUGER and CHARLES T. LOWNDES. } April term, 1868.

15 At the trial of the cause, the plaintiffs, to maintain and prove the issue on their part, gave in evidence the following bond and the account following the same:

1. Know all men by these presents, that we, Alfred Huger, of Charleston, in the district of Charleston, State of South Carolina, and C. T. Lowndes and J. L. Petigru of the same district and State and city, are held and firmly bound unto the United States of America in the just and full sum of thirty ($30,000) thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names and affixed our seals this 24th day of April, in the year of our Lord one thousand eight hundred and sixty.

The condition of this obligation is such, that whereas the above-bounden Alfred Huger was appointed deputy postmaster at Charleston aforesaid, on the 12th day of March, 1860, which said appointment was, on the said 12th day of March, 1860, confirmed by the Senate of the United States: Now, if the said Alfred Huger shall well and truly execute the duties of said office, according to law and the instructions of the Postmaster General, and faithfully, once in three months or oftener, if thereto required, render accounts of his receipts and expenditures, as deputy postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General of the United States for time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise, at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully ac-

count with the United States, in the manner directed by the said
16 Postmaster General, for all moneys postage-stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers which he, as postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department, then the above obligation shall be void, otherwise, of force.

[L. S.] ALFRED HUGER.
[L. S.] C. T. LOWNDES.
[L. S.] J. L. PETIGRU.

Witness:
EVAN EDWARDS.

STATE OF SOUTH CAROLINA, *City of Charleston, ss:*

I hereby certify that C. T. Lowndes and J. L. Petigru, the sureties above named, who have signed the foregoing bond, are severally responsible and sufficient to insure the payment of the entire penalty named therein.

Witness my hand, this 24th day of April, A. D. 1860.

[L. S.] CHARLES MACBETH, *Mayor.*

By the mayor:

JOHN R. HORSEY,
Clerk of Council.

STATE OF SO. CA., *District of Charleston, ss:*

C. T. Lowndes and J. L. Pentigru, sureties, being duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, and that his place of residence is correctly stated therein; that he is a freeholder of said State, and that he is worth double the sum of the penalty of the within bond, over and above all debts and liabilities existing against him.

C. T. LOWNDES.
J. L. PETIGRU.

Subscribed and sworn before me this 24th day of April, 1860.

EVAN EDWARDS,
Not. Pub. and ex-off. Justice of the Peace.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST OFFICE DEPARTMENT.

I, Hugh J. Anderson, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct copy of the original bond of Alfred Huger, late postmaster
17 of Charleston, in the State of South Carolina, now on file in this office.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 15th day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] H. J. ANDERSON, *Auditor.*

Alfred Huger, late postmaster at Charleston, South Carolina, in account with the United States.

DR.				CR.			
	To balances due on his quarterly returns as P. M. from July 1 to Sep. 30, 1860		7,768 45	July 14, 1860.	By am't deposited,		350
Dec. 21, 1860.	Draft on H. Haynesworth		150 00	21.	ditto		500
"	ac. from Oct. 1 to Dec. 31, 1860		9,796 58	28.	ditto		500
				Aug. 4.	ditto		800
				11.	ditto		500
				18.	ditto		500
				25.	ditto		550
				Sep. 1.	ditto		300
				8.	ditto		1,000
				15.	ditto		400
				22.	ditto		500
				29.	ditto		1,000
				Oct. 6.	ditto		900
				13.	ditto		700
				20.	ditto		500
				27.	ditto		650
				Nov. 3.	ditto		1,050
				10.	ditto		500
				17.	ditto		800
				24.	ditto		700
				Dec. 31.	ditto		850
				8.	ditto		400
				15.	ditto		600
				22.	ditto		800
				29.	ditto		300
				31.	ditto		700
				Oct. 11.	Draft favor Jos. Plowden		28 88
				Dec. 12.	Stamps		7 33
				31.	Ship and steamb't letters suspended, 3d qr., '60		19 30
				Jan. 5, 1861.	Amount deposited	1,000	
				12.	ditto	200	
				19.	ditto	600	
				26.	ditto	1,000	
				Feb. 2.	ditto	900	
				9.	ditto	500	
				16.	ditto	600	
				23.	ditto	500	
				Mar. 2.	ditto	1,000	
					Draft favor—		
				14.	A. H. T. Simmons		67 77
				15.	J. F. Drake		66
				"	J. S. Davis		74 51
				16.	C. Brumley		132
				"	J. C. Coan		67 78
				"	J. M. Partlou		70 22
				18.	C. C. McKinney		74 75
				"	J. Leaird		55 28
				"	H. Dreher		38 25
				"	J. Russell		38 12
				"	Jno. Smith		34 35
				"	J. R. Forbes		40 26
				"	D. Rush		34 28
				"	S. C. McWhorter		13 75
				"	D. Sauls		50
				"	T. J. Damall		41 51
				"	J. M. Vandiver		32 05
				"	T. C. Austin		23 50
				"	W. H. Bohnar		39 14
				19.	L. N. Poole		58
				21.	A. Cornelius		27 27

DR. *Statement*—Continued. CR.

		Mar. 21.	J. W. Johnson	66
		"	J. T. Bennett	75
		"	W. Carter	41 03
		22.	B. Washbourne	11 15
		Mar. 22, 1861.	J. S. Burroughs	138 73
		"	J. C. Addison	41 31
		"	R. R. Saneter	46 25
		"	A. B. Wright	34 52
		"	J. W. Thomas	42 25
		"	Isaac Lindsay	52 85
		"	T. J. Shell	35 52
		"	O. Talbert	57 51
		"	J. E. Waddy	75
		"	J. G. Ingraham	50
		26.	E. W. Mosby	135 44
		27.	J. J. Mize	27 95
			T. M. McRae	36 71
			B. B. Mosby	78 81
		28.	J. W. Johnson	66
		"	S. P. Harris	133
		"	F. S. Hunt	133
		"	B. T. Edwards	133
		"	H. G. Duffres	58
		"	L. F. McMills	66
		"	A. J. Connor	66
		"	A. C. Bristow	133
		30.	R. Mayo	125
		"	W. D. Locke	66
		"	L. S. Moore	265 85
		Ap'l —.	J. L. Young	70 45
		8,	C. Terry	45 21
		"	John Griffin	82 27
		"	C. Williams, treasurer of N. C. R. R. Co	383 57
		15.	H. S. Duffers	58
		"	J. F. Drake	68
		"	A. J. Connor	68
		"	Clinton Ward	258 71
		May 1.	L. N. Poole	59
		"	M. D. Locke	68
		May 1.	E. S. Moody	59
		10.	J. D. Frierson	199 78
		17.	H. D. Duffins, rt. agt	59
		18.	Wm. M. Campbell	30 30
		"	Dan'l Sausbury	20 82
		22.	Chas. Williams, jr., treas	500
		25.	John M. Mison	50
		"	J. T. Barnes	191
		"	D. A. Boyd	150
		"	David Sauls	50
		"	A. W. T. Simmons	125
		31.	J. T. Conway	65 93
		Oct. 3, 1865.	Stamps returned, 3d qr. 1865	3,453 11
			Balance	5,576 41
	$37,768 74			$37,768 74
To balance due U. States—interest from Oct. 3, 1865	5,576 41			
To a'c from Jan. 1 to Mar. 31, 1861	9,405 99			
April 1 to June 30	Due.			
June 30, '61, " stamps on hand and unaccounted for	10,647 72			

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST OFFICE DEPARTMENT.

I, Hugh J. Anderson, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct statement of the account of Alfred Huger, late postmaster at Charleston, in the State of South Carolina, as audited and adjusted in this office.

In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office, at the city of Washington, this 15th day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] H. J. ANDERSON, *Auditor.*

21 The plaintiffs also offered to prove that James L. Petigru, one of the parties to the bond of the defendant Alfred Huger, deceased, on the day of March, A. D. 1863, and the fact was admitted by the defendants as proven.

And the defendants, to maintain and prove the issue on their part, gave in evidence:

That defendant Huger was first appointed deputy postmaster at Charleston, South Carolina, by President Jackson, in 1832, and has continuously held the office from that time up to May 31, 1861, having been reappointed to the said office by the successive Presidents of the United States. He received his last appointment on the 12th day of March, 1860, for four years, duly qualified under said appointment, and entered upon and discharged the duties of said office till June 1, 1861. That he then ceased to act as deputy postmaster of the United States at Charleston aforesaid, received and accepted an appointment to the same office from the government of the Confederate States; he duly qualified under said appointment, taking the oath of allegiance to the confederate government, and entered upon and continued to discharge the duties thereof till the evacuation of Charleston, South Carolina, by the confederate forces, in February, 1865.

That some time in February, 1861, the assistant treasurer at Charleston, South Carolina, refused to receive the deposits of public moneys of said defendant, (proceeds of said office,) as required by law, and said Huger addressed a letter to the Postmaster General of the United States asking instructions relative thereto, and received the following reply:

"POST OFFICE DEPARTMENT, FINANCE OFFICE,
"*March* 12, 1861.

"SIR: Your letter of the 9th inst., informing me that the ass't treasurer at Charleston declines receiving any further deposits for the service of this department, is received. You will therefore report on the receipt of this, by letter, the amount of your indebtedness to the department. You will retain the proceeds of your office in hand to meet the department's drafts.

"At the close of each month you will ascertain, as near as may be,

the nett proceeds of your office for the month and carry the amount to the credit side of your general account with the United
22 States for the service of the Post Office Department, and transmit to the Third Ass't Postmaster General a copy showing all the moneys received and paid by you during the month. The balance struck on this account at the end of each month must be carried forward to the account for the month succeeding.

"With each monthly transcript of your general account you will transmit all the drafts paid by you during the month, having first crossed them with strong black lines, so as effectually to cancel them, without materially impairing their legibility. Your monthly statements should be addressed to 3rd Ass't Postmaster General, separate and apart from all other matter, except the cancelled drafts.

"Very respectfully, your ob't serv't,
(Signed) A. N. ZEVERLY,
3rd Ass't P. M. Gen'l.

Alfred Huger, Esq., Postmaster, Charleston, S. C.

In pursuance of said letter of instructions said Huger did retain in his possession and custody the proceeds of his office to meet the department's drafts.

Said defendant had, at the end of May, 1861, of the proceeds of his said office of the property of the United States, between $2,200 and $2,400, in gold; $3,453 11 in postage stamps, and about $700 in stamped envelopes.

That the State of South Carolina, in the month of December, 1860, dissolved its connexion with the United States, and some time subsequently, early in 1861, entered into a union with divers other southern States, which union was styled the Confederate States of America. That a war ensued between the United States and the said Confederate States, and some time in April, 1861, the forces of the said Confederate States took possession of the city of Charleston, South Carolina, and all the forts and arsenals of the United States, and expelled by force the soldiers and representatives of the United States government. That from said time forward, without interruption, till February, 1865, the armies and representatives of the Confederate States government held and possessed complete control of the said city of Charleston, and said defendant Huger was, during said period, wholly subject to the power thereof. That the government of the United States could not and did not afford said Huger any protection against the authority of the said Confederate
23 States.

That some time in June or July, 1861, defendant Huger reported, by order of the confederate posmaster general, the condition of his accounts with the government of the United States and what property of the United States still remained in his possession.

That regular mail communication ceased between Charleston and Washington in May, 1861. The said gold was in June following sealed up in a package and deposited in the Bank of Charleston, at

Charleston, South Carolina, for safe keeping, where it remained safely till some time in 1863, when it was sent to the Branch Bank of the State of South Carolina, at Columbia, South Carolina, for safe keeping. That soon after being sent to Coulumbia, South Carolina, it was demanded of said Huger by the postmaster general of the Confederate States, and he, said Huger, thereupon ordered the said bank to deliver it up to the confederate government, which the said bank accordingly did. That said demand by the confederate government for said gold came to said Huger through the mail, and though it was unaccompanied by any threat or suggestion of force, yet said Huger felt he was surrounded by a power he could not resist, and, although he knew the gold to be the property of the United States, he felt compelled to give the order for the transfer of it to the Confederate States, which he then did. That some time after the said order for the transfer, he received notice from the Confederate States government that said gold had been received by them.

That the said stamped envelopes were demanded by the Confederate government some time in 1863 by an order received through the mail, and were forwarded accordingly to the confederate post office department at Richmond, Virginia.

That of the postage stamps there were retained safely in the custody of said Huger $3,453\frac{1}{10}\frac{1}{0}$ dollars till the evacuation of Charleston, in February, 1865, and then the same were taken and received by the United States government, and the same were credited by the Post Office Department in the defendant's account.

And the testimony on both sides being closed, the plaintiff prayed the court to instruct the jury in the following particulars:

1. That the defendant, Huger, having accepted the office of
24 deputy postmaster at Charleston, South Carolina, on the 12th day of March, 1860, and bound himself to keep safely all the public money collected by him, or otherwise at any time placed in his possession and custody till the same was ordered by the Postmaster General for all moneys, postage stamps, stamped envelopes, &c., &c., which he, as postmaster, or as agent and depositary, should receive for the use and benefit of the Post Office Department. And having entered upon the duties of that office and continued therein up to the 31st of May, A. D. 1861, and received the salary and commissions allowed by law therefor, must be held strictly to the undertaking in his bond; and if the evidence shows that during his conuance in said office as postmaster there came to his hands property of the United States to the amount of $5,576 41 which he has not accounted for, or paid over, as required by the Postmaster General, then a verdict for said amount with interest at the rate of six per cent. from the date of the default must be rendered for the plaintiffs.

2. That the defendant, Huger, did, in pursuance of the order of John A. Reagan, postmaster general of the Confederate States, report to that officer the state of his accounts with the United States and the property thereof in his possession, and subsequently, upon the order of the said John A. Reagan or his assistants, forward and direct to be forwarded to him all or any portion of said property, is not a

proper accounting to the government of the United States therefort and does not bar the right of the United States to recover judgmen, against said Huger and his sureties for the same.

3. That said Confederate States or government, of which John A. Reagan was an officer or agent, was an unlawful combination of divers persons, citizens of the United States, engaged in unlawful insurrection and rebellion against the government of the same, and within the territory thereof, unlawfully usurping the powers of government, and as such it continued to be, unrecognized as having any lawful existence till suppressed by the military power of the United States; hence neither said confederate government nor its officers or agents could originate any legal action or issue any order which the defendant, Huger, was bound to obey.

25 4. That this is not strictly a case to which the common law of agency or bailment applies, but a case of contract between the United States government and the defendants, as equal contracting parties, and that the rights of the one and the obligations of the other, at most, were only suspended and not impaired by the late war. That the war having ceased and physical obstructions removed, the defendant must respond to the requirements of his bond.

5. That the surrender of the gold and postage-envelopes belonging to the United States by defendant, Huger, or the order of the agent of the confederate government, received by him through the mails, and which contained no threat or suggestion of compulsion, was not a surrender or yielding up of the government property under the pressure of irresistable force.

But the court rejected each and every of the instructions prayed for by the plaintiffs, and in lieu thereof instructed the jury as follows:

As to the first instruction prayed for, the court said, I do not so instruct you. I instruct you that if because of the war and belligerent condition in which the defendant found himself he was unable to comply with his contract then he was absolved. That bond was entered into in a condition of things totally different from that in which he found himself, a condition of things which rendered it morally and physically impossible for him to comply with the literal fulfillment of the condition of the bond.

As to the second instruction prayed for, the court said: I instruct you that his not accounting, under the circumstances, when the subject of a military power which he could not control, for public property of the United States in his possession, was not inconsistent with the obligation of his bond, because done in submission to a military power over riding any will he might otherwise exercise.

As to the third instruction prayed for, the court said: I instruct you, gentlemen, that insofar as "that said Confederate States was an unlawful combination of divers persons, citizens of the United States engaged in unlawful insurrection and rebellion against the government of the same, and within the territory thereof, un-

26 lawfully usurping the powers of government, and as such it continued to be unrecognized as having any lawful existence. till suppressed by the military power of the United States," &c., I

give the instruction, but do not give the conclusion, that is, "that the officers or agents of the confederate government could issue any order which the defendant, Alfred Huger, was bound to respect." I instruct you, the United States having ceded to the Confederate States (so-called) the authority of a belligerent, the power incident to the authority of a belligerent was conceded to the Confederate States, and they had such right to give an order which it was not possible for the postmaster or assistant postmaster here to dispute. They had the authority of a belligerent, and it was not within the competency of the postmaster to dispute the regular exercise of that authority.

As to the fourth instruction prayed for, the court said: I am further asked to instruct you "that this is not strictly a case to which the common law of agency or bailment applies, but a case of contract between the United States government and the defendant as equal contracting parties, and that the rights of the one and obligation of the other, at most, were only suspended, and not impaired by the late war; that the war having ceased and physical obstructions removed, the defendant must respond to the requirements of his bond." I instruct you that this bond implies on the one side and the other a condition of things which renders it possible on either part; that is, that the United States on its part shall secure to the defendant that condition of things in which it was possible for him to execute the bond, and if it does not secure him that condition of things, then he is not to be held to an impossibility. He cannot be called upon to discharge an obligation which it was impossible for him to discharge by [a] a condition of things which put it out of his power to meet his obligation, and in which the United States had left him helpless when its obligation was to have helped him. When the United States was unable to perform its own part, and was helpless to help him to discharge his obligation, he is not answerable for the failure to discharge that obligation. The obligation is at an end, and he is discharged.

27 As to the fifth instruction prayed for, the court said: I charge you, gentlemen, that that order from a government essentially military, and from the nature of things a military despotism, was the expression of a force that could not be resisted, and as peremptory of necessity as if the bayonet were at his throat. It was a command, and the command carried with it irresistable power. I would be understood as negativing the instructions asked for by the district attorney, emphatically. I think the negative of this instruction as ruling the very essence of the case, that is, that the defendant living on the soil in such a contest in which such powers were engaged, the one struggling for existence and the other for the rescue of its rightful authority; the one contending for the establishment of independence and the other for the re-establishment of rightful constitutional rule and national integrity; in such a tremendous contest a party belligerent making a demand upon any inhabitant or citizen on its soil, made a demand which carried with it the necessity of instant obedience, and the refusal to obey which, if it did not bring harm to the party who might oppose it, would have promptly been

executed by the government itself. I repeat, the execution of the demand, if not executed by the party himself, would be executed instantly by the government, and if the property were not surrendered it would be taken. The refusal to surrender would have been idle, certainly, and, at the same time, might have become dangerous.

To the granting of which said instructions, and to the refusal of those prayed for by the plaintiffs, the plaintiffs then and there, and before the jury had withdrawn from the bar, did except; and inasmuch as the matters aforesaid do not appear by the verdict of the jury, prayed the court to sign and seal this his bill of exceptions, which is accordingly done, this first day of May, A. D. 1868.

[SEAL.] GEO. F. BRYAN,
U. S. Judge, Dis't of S. Ca.

28 And now here, at this day, to wit, the eighteenth day of August, A. D. 1868, the said United States, plaintiffs, produced here to the said court, the writ of the said United States of America for the correcting of errors, of and upon the promises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so rendered as aforesaid, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following:

THE UNITED STATES OF AMERICA:

The President of the United States to the judges of the Circuit Court of the United States for the fourth circuit, in and for the district of South Carolina:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between the United States of America, plaintiffs, and Alfred Huger and Charles T. Lowndes, defendants, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] DAN'L HORLBECK,
C. C. C. U. S., for So. Car.

29 In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

The United States of America to Alfred Hugar and Charles T. Lowndes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of South Carolina, wherein the United States of America are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness my hand and seal at the city of Charleston, in the district aforesaid, this eighteenth day of August, A. D. 1868.

[L.S.] GEO. F. BRYAN,
U. S. Judge, Dis't of S. Ca.

I certify the above is a true copy of the record in the above named cause.

[L.S.] DAN. HORLBECK,
C. C. C. U. S. for So. Car.

Charleston, S. C., Aug. 18, 1868.

The United States of America to Alfred Huger and Charles T. Lowndes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next. pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of South Carolina, wherein the United States are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, at the city of Charleston, in the district aforesaid this 18th day of August, A. D. 1868.

[L.S.] GEO. F. BRYAN,
U. S. Judge Dis't of S. Ca.

UNITED STATES MARSHAL'S OFFICE, SOUTH CAROLINA DISTRICT,
Charleston, Aug. 20, 1868.

I hereby depute Jno. H. Simons to execute the within process.

J. P. M. EPPING,
U. S. Marshal.

CHARLESTON, *Aug.* 20, 1868.

I hereby certify that I executed the within process by serving copies thereof as follows: copy for Charles T. Lowndes on him in person, and copy for Alfred Huger left with Messrs. Rutledge and Young, (this B. H. Rutledge,) his attorneys, on this 29th day of Aug't 1868.

JOHN H. SIMONS,
Special Deputy.